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8 Attorneys for Plaintiff NIKE, INC.

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 NIKE, INC.,

12 Plaintiff,

13 v.

14 SUPER STAR INT'L, INC., and SAI
LIU,

15 Defendants.
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21
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Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

- (1) **TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114;**
- (2) **UNFAIR COMPETITION IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(a);**
- (3) **TRADEMARK DILUTION IN VIOLATION OF 15 U.S.C. § 1114;**
- (4) **COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION;**
- (5) **STATUTORY TRADEMARK DILUTION IN VIOLATION OF CAL. BUS. & PROF. CODE § 14247**
- (6) **UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200 ET SEQ.; AND**
- (7) **PATENT INFRINGEMENT IN VIOLATION OF 35 U.S.C. § 271**

Jury Trial Demanded

1 **COMPLAINT**

2 Plaintiff, NIKE, Inc. (“NIKE”), for its complaint against Defendants, Super Star
3 Int’l, Inc., and Sai Liu, (collectively, “Defendants”), based on provisional knowledge
4 and on information and belief as appropriate, alleges as follows:

5 **I. The Parties**

6 1. NIKE is a corporation organized and existing under the laws of the State of
7 Oregon with a principal place of business at One Bowerman Drive, Beaverton, Oregon
8 97005.

9 2. On information and belief, Super Star Int’l, Inc. (“Superstar”), is a
10 corporation organized and existing under the laws of the State of California with a
11 principal place of business at 1935 Santa Anita Ave., South El Monte, California
12 91733.

13 3. On information and belief, Sai Liu is an individual and the President and
14 registered agent of Superstar. On information and belief, Sai Liu is the alter ego of
15 Superstar and controls its selection, importation, and sales of footwear designs,
16 including those relevant to this dispute.

17 **II. Jurisdiction and Venue**

18 4. This is an action for trademark infringement, false designation of origin,
19 unfair competition, trademark dilution, and patent infringement. This action arises
20 under the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.* (“Lanham Act”), California
21 Business and Professions Code Sections 14247 and 17200, *et seq.*, federal common
22 law, the common law of the state of California, and U.S. Patent Laws, 35 U.S.C.
23 §§ 271, 281, 283-285.

24 5. This Court has subject matter jurisdiction over this action pursuant to at
25 least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

26 6. On information and belief, Defendants have and are continuing to
27 advertise, offer for sale, and sell infringing and diluting footwear products to customers,
28 including customers in the State of California and in this District.

1 7. On information and belief, this Court may exercise personal jurisdiction
2 over Defendants based upon their contacts with this forum, including at least having a
3 principal place of business here, regularly and intentionally doing business here, and
4 committing acts giving rise to this lawsuit here.

5 8. Venue is proper in this judicial district pursuant to at least 28 U.S.C.
6 §§ 1391(b) and (c).

7 **III. General Allegations – NIKE’s Trademarks and Design Patents**

8 9. For many years, NIKE has continuously engaged in the development,
9 manufacture, and sale of a wide array of athletic and fashion footwear, apparel, and
10 sports equipment. NIKE has taken many steps to protect its innovative designs,
11 including its footwear-related designs. For example, NIKE owns a variety of common
12 law and federal trademark rights relating to the source identifying features of its
13 footwear designs. Additionally, NIKE owns numerous United States design patents
14 covering many of its footwear designs.

15 **A. NIKE’s Air Force 1 Trademarks**

16 10. Relevant to this dispute, in 1982, NIKE designed the Air Force 1 shoe.
17 Since then, NIKE has produced the Air Force 1 shoe in more than 1,700 different color
18 combinations and has sold the shoe in all fifty states and around the world. The design
19 of the Air Force 1 is one of the most popular shoe designs of all time, as evidenced by
20 the fact that NIKE sells tens of millions of pairs of shoes bearing the Air Force 1 design
21 every single year.

22 11. The Air Force 1 shoe design is also is also the subject of widespread and
23 unsolicited public attention. This publicity extends from acclaim in magazines and
24 newspapers to appearances in movies, television shows, and even hit songs dedicated to
25 the shoe. In particular, the Air Force 1 shoe design has been featured in numerous
26 newspaper, magazine, and Internet articles that extol its presence throughout American
27 culture and/or that celebrated the shoe design’s twenty-fifth anniversary in 2007.
28 Example articles and website images illustrating the fame and unsolicited publicity of

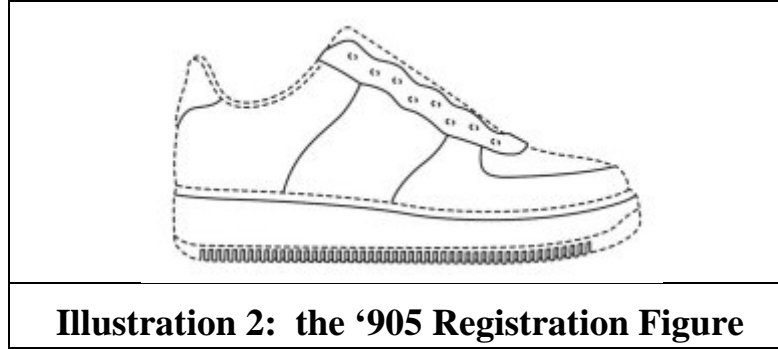
the Air Force 1 are attached to this Complaint as Exhibit A.

12. The upper, midsole, and outsole of the Air Force 1 shoe design have a distinctive and non-functional configuration that identifies to consumers that the origin of the shoe is NIKE. Illustration 1 below shows the iconic Air Force 1 shoe design.

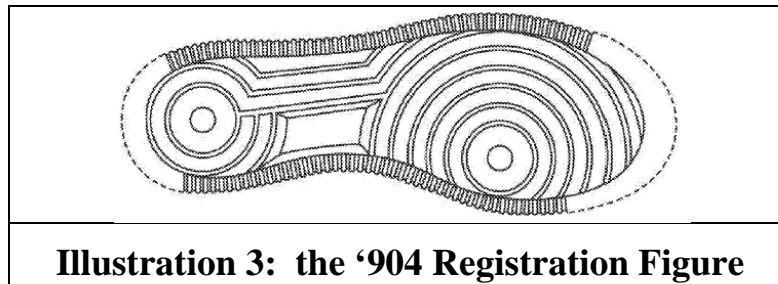


Illustration 1: The Air Force 1 Shoe

13. NIKE owns federal trademark registrations for the design of the Air Force 1 shoe. For example, NIKE owns U.S. Trademark Registration No. 3,451,905, registered June 24, 2008, for “the design of the stitching on the exterior of the shoe, the design of the material panels that form the exterior body of the shoe, the design of the wavy panel on the top of the shoe that encompasses the eyelets for the shoe laces, the design of the vertical ridge pattern on the sides of the sole of the shoe, and the relative position of these elements to each other” as generally shown in Illustration 2 below. A copy of Registration No. 3,451,905 (“the ‘905 Registration”) is attached to this Complaint as Exhibit B.



14. NIKE also owns U.S. Trademark Registration No. 3,451,904, registered June 24, 2008, for “the design of the tread on the sole a shoe” as generally shown in Illustration 3 below. A copy of Registration No. 3,451,904 (“the ‘904 Registration”) is attached to this Complaint as Exhibit C.



15. The ‘904 and ‘905 Registrations have become incontestable, and constitute conclusive evidence of the validity of the trademarks and of NIKE’s ownership of and exclusive right to use the trademarks.

16. NIKE also owns common law trademark rights in the upper, midsole, and outsole of the Air Force 1 shoe design as a result of NIKE’s continuous and exclusive use of the design for more than thirty years. NIKE’s federal and common law trademark rights in the designs of the Air Force 1 shoe are collectively hereafter referred to as the “NIKE Marks.”

17. As a result of NIKE’s long-term, exclusive, continuous, and substantial use, advertising, and sales of shoes bearing the NIKE Marks, and the widespread publicity and attention that has been paid to the NIKE Marks, the NIKE Marks are famous and have acquired substantial secondary meaning in the marketplace as consumers have come to uniquely associate them as a source identifier of NIKE.

B. NIKE's Asserted Design Patent

18. NIKE is renowned for creating highly sought after, ornamental footwear designs. In 2011, NIKE introduced its NIKE Free Run +2, an image of which appears in Illustration 4 below.



Illustration 4: the NIKE Free Run +2 Shoe

19. Because its ornamental footwear designs are often copied, NIKE takes steps to protect its designs. To that end, on August 16, 2011, the United States Patent and Trademark Office issued United States Design Patent No. D643,202 (hereafter, the “‘202 Patent” or “Asserted Patent”) to NIKE (attached to this complaint as Exhibit D). An exemplary view of the claim of the Asserted Patent is displayed in Illustration 5 below. NIKE owns all right, title, and interest in the ‘202 Patent and the ‘202 Patent is presumed to be valid.



Illustration 5: the Asserted Patent Claim

General Allegations – Defendants’ Unlawful Activities

20. On information and belief, Defendants have and are continuing to advertise, offer for sale, and sell footwear bearing confusingly similar imitations of the

NIKE Marks, as well as footwear bearing designs that are substantially similar to the Asserted Patent (collectively, the “Offending Products”).

21. Illustration 6 below demonstrates Defendants’ unlawful activity by comparing examples of the NIKE Marks and the Asserted Patent to representative images of Offending Products.

**Illustration 6: Example NIKE Marks or Asserted Patent (left),
Representative Offending Product (right)**



‘905 Registration Figure

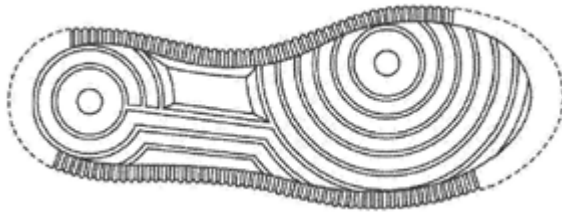


Air Force 1 Shoe Design



Offending Product

**Illustration 6: Example NIKE Marks or Asserted Patent (left),
Representative Offending Product (right)**



'904 Registration Figure



Air Force 1 Shoe Design



Offending Product



Asserted Patent Claim



Offending Product

22. NIKE used the NIKE Marks extensively and continuously before Defendants began selling, offering to sell, distributing, or advertising the Offending Products.

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1 23. NIKE never authorized Defendants to sell, offer to sell, distribute, or
2 advertise the Offending Products.

3 24. This is not the first time Defendants have infringed NIKE intellectual
4 property rights, or the intellectual property rights of Converse Inc. (“Converse”), a
5 wholly owned subsidiary of NIKE. Over the past eight years the Defendants, which on
6 information and belief have operated under a variety of company and/or trade names,
7 including JeAir and K-Air, have established a clear pattern of willful infringements. To
8 that end, between February 2006 and February 2012, NIKE and Converse served
9 Defendants or their predecessor businesses with seven cease and desist letters relating
10 to infringement of eleven NIKE design patents and several Converse trademarks.

11 25. Because Defendants refused to stop infringing NIKE and Converse’s
12 intellectual property rights, on June 15, 2012, NIKE and Converse filed civil action
13 number No. 12-5240 in the Central District of California against the Defendants, among
14 other parties. Defendants ultimately admitted their infringements and consented to
15 entry of judgment in favor of NIKE and Converse on every allegation of the complaint.
16 (*See* Case No. 12-5240, Dkt. No. 90). The Court entered the consent judgment and a
17 permanent injunction on May 15, 2013. (*Id.*).

18 26. Several months later, on August 21, 2013, NIKE’s representatives
19 observed Defendant Superstar at the World Shoe Association (“WSA”) trade show in
20 Las Vegas offering to sell shoes identified as model “M853” bearing the design covered
21 by the ‘202 Patent. The same day, NIKE’s counsel provided a copy of the ‘202 Patent
22 to representatives at Superstar’s WSA trade show booth. Nevertheless, on October 8,
23 2013, a private investigator discovered Superstar offering to sell the same design at its
24 retail store in South El Monte, California.

25 27. On information and belief – as evidenced by the facts and circumstances
26 alleged above, Defendants’ infringements have been intentional and willful, and
27 manifest a deliberate and continuing pattern of infringing Plaintiffs’ trademark and
28 design patent rights.

Count I: Trademark Infringement under Section 32(1) of the Lanham Act
15 U.S.C. § 1114(1)

28. NIKE re-alleges each and every allegation set forth in paragraphs 1 through 27 above, inclusive, and incorporates them by reference herein.

29. Defendants' offers to sell, sales, distribution, and/or advertisement of Offending Products violates Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

30. The NIKE Marks are entitled to protection under both federal and common law. The NIKE Marks include U.S. Trademark Registration Nos. 3,451,904 and 3,451,905. These trademark registrations have become incontestable and constitute conclusive evidence of the validity of trademarks and of NIKE's ownership of and exclusive right to use the trademarks.

31. The NIKE Marks have distinctive appearances using unique and non-functional designs. NIKE has extensively and continuously promoted and used the NIKE Marks for decades in the United States and worldwide. Through that extensive and continuous use, the NIKE Marks have become famous and well-known indicators of the origin and quality of NIKE footwear. The NIKE Marks have also acquired substantial secondary meaning in the marketplace. Moreover, the NIKE Marks became famous and acquired this secondary meaning long before Defendants commenced their use of the NIKE Marks and colorable imitations thereof in connection with the Offending Products.

32. Defendants' use of the NIKE Marks and colorable imitations thereof is likely to cause consumer confusion as to the origin and/or sponsorship/affiliation of the Offending Products, at least by creating the false and misleading impression that the Offending Products are manufactured by, authorized by, or otherwise associated with NIKE.

33. Defendants' use of the NIKE Marks and colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable injury to NIKE for which NIKE has no adequate remedy at law, including at least substantial and

1 irreparable injury to the goodwill and reputation for quality associated with the NIKE
2 Marks.

3 34. On information and belief, Defendants' use of the NIKE Marks and
4 colorable imitations thereof has been intentional, willful, and malicious. Defendants'
5 bad faith is evidenced at least by the similarity of the Offending Products to the NIKE
6 Marks, as demonstrated in Illustration 4 above, and by the Defendants' long-standing
7 and continuing disregard for NIKE's intellectual property rights.

8 35. NIKE is entitled to injunctive relief, and NIKE is also entitled to recover
9 Defendants' profits, actual damages, enhanced profits and damages, costs, and
10 reasonable attorney fees under 15 U.S.C. §§ 1114, 1116, and 1117.

11 **Count II: False Designation of Origin/Unfair Competition under**
12 **Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)**

13 36. NIKE re-alleges each and every allegation set forth in paragraphs 1
14 through 35 above, inclusive, and incorporates them by reference herein.

15 37. Defendants' offers to sell, sales, distribution, and/or advertisement of
16 Offending Products, in direct competition with NIKE, violates Section 43(a) of the
17 Lanham Act, 15 U.S.C. § 1125(a).

18 38. The NIKE Marks are entitled to protection under both federal and common
19 law. The NIKE Marks include U.S. Trademark Registration Nos. 3,451,904 and
20 3,451,905. These trademark registrations have become incontestable and constitute
21 conclusive evidence of the validity of trademarks and of NIKE's ownership of and
22 exclusive right to use the trademarks.

23 39. The NIKE Marks have distinctive appearances using unique and non-
24 functional designs. NIKE has extensively and continuously promoted and used the
25 NIKE Marks for decades in the United States and worldwide. Through that extensive
26 and continuous use, the NIKE Marks have become famous and well-known indicators
27 of the origin and quality of NIKE footwear. The NIKE Marks have also acquired
28 substantial secondary meaning in the marketplace. Moreover, the NIKE Marks became

1 famous and acquired this secondary meaning long before Defendants commenced their
 2 use of the NIKE Marks and colorable imitations thereof in connection with the
 3 Offending Products.

4 40. Defendants' use of the NIKE Marks and colorable imitations thereof
 5 constitutes a false designation of origin that is likely to cause consumer as to the origin
 6 and/or sponsorship/affiliation of the Offending Products, at least by creating the false
 7 and misleading impression that the Offending Products are manufactured by, authorized
 8 by, or otherwise associated with NIKE.

9 41. Defendants' use of the NIKE Marks and colorable imitations thereof has
 10 caused and, unless enjoined, will continue to cause substantial and irreparable injury to
 11 NIKE for which NIKE has no adequate remedy at law, including at least substantial and
 12 irreparable injury to the goodwill and reputation for quality associated with the NIKE
 13 Marks.

14 42. On information and belief, Defendants' use of the NIKE Marks and
 15 colorable imitations thereof has been intentional, willful, and malicious. Defendants'
 16 bad faith is evidenced at least by the similarity of the Offending Products to the NIKE
 17 Marks, as demonstrated in Illustration 4 above, and by the Defendants' long-standing
 18 and continuing disregard for NIKE's intellectual property rights.

19 43. NIKE is entitled to injunctive relief, and NIKE is also entitled to recover
 20 Defendants' profits, actual damages, enhanced profits and damages, costs, and
 21 reasonable attorney fees under 15 U.S.C. §§ 1125(a), 1116, and 1117.

22 **Count III: Dilution under Section 43(c) of the Lanham Act**

23 **15 U.S.C. § 1125(c)**

24 44. NIKE re-alleges each and every allegation set forth in paragraphs 1
 25 through 43 above, inclusive, and incorporates them by reference herein.

26 45. Defendants' offers to sell, sales, distribution, and/or advertisement of
 27 Offending Products violates Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

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1 46. The NIKE Marks are entitled to protection under both federal and common
2 law. The NIKE Marks include U.S. Trademark Registration Nos. 3,451,904 and
3 3,451,905. These trademark registrations have become incontestable and constitute
4 conclusive evidence of the validity of trademarks and of NIKE's ownership of and
5 exclusive right to use the trademarks.

6 47. The NIKE Marks have distinctive appearances using unique and non-
7 functional designs. NIKE has extensively and continuously promoted and used the
8 NIKE Marks for decades in the United States and worldwide. Through that extensive
9 and continuous use, the NIKE Marks have become famous and well-known indicators
10 of the origin and quality of NIKE footwear. The NIKE Marks have also acquired
11 substantial secondary meaning in the marketplace. Moreover, the NIKE Marks became
12 famous and acquired this secondary meaning long before Defendants commenced their
13 use of the NIKE Marks and colorable imitations thereof in connection with the
14 Offending Products.

15 48. Defendants' use of the NIKE Marks and colorable imitations thereof is
16 likely to cause, and has caused, dilution of the famous NIKE Marks at least by eroding
17 the public's exclusive identification of the famous NIKE Marks with NIKE and by
18 lessening the capacity of the famous NIKE Marks to identify and distinguish NIKE
19 footwear.

20 49. Defendants' use of the NIKE Marks and colorable imitations thereof has
21 caused, and, unless enjoined, will continue to cause, substantial and irreparable injury
22 to NIKE for which NIKE has no adequate remedy at law, including at least substantial
23 and irreparable injury to the goodwill and reputation for quality associated with the
24 NIKE Marks.

25 50. On information and belief, Defendants' use of the NIKE Marks and
26 colorable imitations thereof has been intentional, willful, and malicious. Defendants'
27 bad faith is evidenced at least by the similarity of the Offending Products to the NIKE
28 Marks, as demonstrated in Illustration 4 above, and by the Defendants' long-standing

1 and continuing disregard for NIKE's intellectual property rights.

2 51. NIKE is entitled to injunctive relief, and NIKE is also entitled to recover
3 Defendants' profits, actual damages, enhanced profits and damages, costs, and
4 reasonable attorney fees under 15 U.S.C. §§ 1125(c), 1116, and 1117.

5 **Count IV: Common Law Trademark Infringement and Unfair Competition**

6 52. NIKE re-alleges each and every allegation set forth in paragraphs 1
7 through 51 above, inclusive, and incorporates them by reference herein.

8 53. Defendants' offers to sell, sales, distribution, and/or advertisement of
9 Offending Products, in direct competition with NIKE, constitute common law
10 trademark infringement and unfair competition.

11 54. The NIKE Marks are entitled to protection under both federal and common
12 law. The NIKE Marks have distinctive appearances using unique and non-functional
13 designs. NIKE has extensively and continuously promoted and used the NIKE Marks
14 for decades in the United States and worldwide. Through that extensive and continuous
15 use, the NIKE Marks have become famous and well-known indicators of the origin and
16 quality of NIKE footwear. The NIKE Marks have also acquired substantial secondary
17 meaning in the marketplace. Moreover, the NIKE Marks became famous and acquired
18 this secondary meaning long before Defendants commenced their use of the NIKE
19 Marks and colorable imitations thereof in connection with the Offending Products.

20 55. Defendants' use of the NIKE Marks and colorable imitations thereof is
21 likely to cause consumer confusion as to the origin or sponsorship of the Offending
22 Products by creating the false and misleading impression that the Offending Products
23 are manufactured by, authorized by, or otherwise associated with NIKE.

24 56. Defendants' use of the NIKE Marks and colorable imitations thereof has
25 caused and, unless enjoined, will continue to cause substantial and irreparable injury to
26 NIKE for which NIKE has no adequate remedy at law, including at least substantial and
27 irreparable injury to the goodwill and reputation for quality associated with the NIKE
28 Marks.

57. On information and belief, Defendants' use of the NIKE Marks and colorable imitations thereof has been intentional, willful, and malicious. Defendants' bad faith is evidenced at least by the similarity of the Offending Products to the NIKE Marks, as demonstrated in Illustration 4 above, and by the Defendants' long-standing and continuing disregard for NIKE's intellectual property rights.

58. NIKE is entitled to injunctive relief, and NIKE is also entitled to recover Defendants' profits, actual damages, costs, and reasonable attorney fees.

Count V: Dilution under California State Law

California Business and Professions Code § 14247

59. NIKE re-alleges each and every allegation set forth in paragraphs 1 through 58 above, inclusive, and incorporates them by reference herein.

60. Defendants' offers to sell, sales, distribution, and/or advertisement of Offending Products are diluting and are likely to continue to dilute the distinctive nature of NIKE's trademarks and trade dress. These acts are injuring NIKE's business reputation and goodwill in violation of Section 14247 of California Business and Professions Code.

61. The NIKE Marks are entitled to protection under federal law, common law, and California state law. The NIKE Marks have distinctive appearances using unique and non-functional designs. NIKE has extensively and continuously promoted and used the NIKE Marks for decades in the United States and worldwide. Through that extensive and continuous use, the NIKE Marks have become famous and well-known indicators of the origin and quality of NIKE footwear. The NIKE Marks have also acquired substantial secondary meaning in the marketplace. Moreover, the NIKE Marks became famous and acquired this secondary meaning long before Defendants commenced their use of the NIKE Marks and colorable imitations thereof in connection with the Offending Products.

62. Defendants' use of the NIKE Marks and colorable imitations thereof is likely to cause, and has caused, dilution of the famous NIKE Marks at least by eroding

1 the public's exclusive identification of the famous NIKE Marks with NIKE and by
2 lessening the capacity of the famous NIKE Marks to identify and distinguish NIKE
3 footwear.

4 63. Defendants' use of the NIKE Marks and colorable imitations thereof has
5 caused, and, unless enjoined, will continue to cause, substantial and irreparable injury
6 to NIKE for which NIKE has no adequate remedy at law, including at least substantial
7 and irreparable injury to the goodwill and reputation for quality associated with the
8 NIKE Marks.

9 64. On information and belief, Defendants' use of the NIKE Marks and
10 colorable imitations thereof has been intentional, willful, and malicious. Defendants'
11 bad faith is evidenced at least by the similarity of the Offending Products to the NIKE
12 Marks, as demonstrated in Illustration 4 above.

13 65. NIKE is entitled to injunctive relief, and NIKE is also entitled to recover
14 Defendants' profits, actual damages, and enhanced profits and damages.

15 **Count VI: Unfair Competition under California State Law**

16 **California Business and Professions Code § 17200**

17 66. NIKE re-alleges each and every allegation set forth in paragraphs 1
18 through 65 above, inclusive, and incorporates them by reference herein.

19 67. Defendants' offers to sell, sales, distribution, and/or advertisement of
20 Offending Products constitutes unfair competition within the meaning and in violation
21 of the California Business and Professions Code §§ 17200, *et. seq.*

22 68. The NIKE Marks are entitled to protection under federal law, common
23 law, and California state law. The NIKE Marks include U.S. Trademark Registration
24 Nos. 3,451,904 and 3,451,905. The NIKE Marks have distinctive appearances using
25 unique and non-functional designs. NIKE has extensively and continuously promoted
26 and used the NIKE Marks for decades in the United States and worldwide. Through
27 that extensive and continuous use, the NIKE Marks have become famous and well-
28 known indicators of the origin and quality of NIKE footwear. The NIKE Marks have

1 also acquired substantial secondary meaning in the marketplace. Moreover, the NIKE
2 Marks became famous and acquired this secondary meaning long before Defendants
3 commenced their use of the NIKE Marks and colorable imitations thereof in connection
4 with the Offending Products.

5 69. Defendants' use of the NIKE Marks and colorable imitations thereof is
6 likely to cause consumer confusion as to the origin or sponsorship of the Offending
7 Products by creating the false and misleading impression that the Offending Products
8 are manufactured by, authorized by, or otherwise associated with NIKE, and is also
9 likely to cause, and has caused, dilution of the famous NIKE Marks at least by eroding
10 the public's exclusive identification of the famous NIKE Marks with NIKE and by
11 lessening the capacity of the famous NIKE Marks to identify and distinguish NIKE
12 footwear.

13 70. Defendants' use of the NIKE Marks and colorable imitations thereof has
14 caused, and, unless enjoined, will continue to cause, substantial and irreparable injury
15 to NIKE for which NIKE has no adequate remedy at law, including at least substantial
16 and irreparable injury to the goodwill and reputation for quality associated with the
17 NIKE Marks.

18 71. On information and belief, Defendants' use of the NIKE Marks and
19 colorable imitations thereof has been intentional, willful, and malicious. Defendants'
20 bad faith is evidenced at least by the similarity of the Offending Products to the NIKE
21 Marks, as demonstrated in Illustration 4 above.

22 72. NIKE is entitled to injunctive relief pursuant to California Business and
23 Professions Code § 17203, and NIKE is also entitled to recover Defendants' profits,
24 restitution, and reasonable attorney fees.

25 **Count VII: Patent Infringement**

26 73. NIKE re-alleges each and every allegation set forth in paragraphs 1
27 through 72 above, inclusive, and incorporates them by reference herein.

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1 74. On information and belief, Defendants have used, sold, or offered to sell,
2 and will continue to use, sell, or offer to sell, footwear that infringes the claim of the
3 Asserted Patent, without license from NIKE, in the State of California, including this
4 judicial district, and elsewhere throughout the United States.

5 75. By using, selling, and/or offering for sale their footwear, Defendants have
6 infringed, and will continue to infringe, the Asserted Patent under 35 U.S.C. § 271
7 literally and/or under the doctrine of equivalents.

8 76. On information and belief, Defendants' infringement of the Asserted
9 Patent under 35 U.S.C. § 271 has been and continues to be willful and deliberate.

10 77. As a consequence of Defendants' infringing acts, NIKE has been, is being,
11 and will continue to be injured and has suffered, is suffering, and will continue to suffer
12 injury and damages for which it is entitled to relief under 35 U.S.C. §§ 281, 284, 285,
13 and 289.

14 78. As a consequence of Defendants' infringing acts, Defendants have also
15 caused, are causing, and will continue to cause irreparable harm to NIKE, for which
16 there is no adequate remedy at law, and for which NIKE is entitled to injunctive relief
17 under 35 U.S.C. § 283.

18 **Relief Sought**

19 WHEREFORE, Plaintiffs respectfully pray for:

20 1. Judgment that Defendants have (i) willfully infringed the Asserted Patent
21 in violation of 35 U.S.C. §§ 271 (a) and (b), (ii) willfully infringed the NIKE Marks in
22 violation of § 1114 of Title 15 in the United States Code; (iii) willfully used false
23 designations of origin/unfair competition in violation of § 1125(a) of Title 15 in the
24 United States Code; (iv) willfully diluted the NIKE Marks in violation of § 1125(c) of
25 Title 15 in the United States Code; (v) willfully violated NIKE's common law rights in
26 the NIKE Marks; (vi) willfully infringed the NIKE Marks and engaged in unfair
27 competition in violation of the common law of California; (vii) willfully diluted the
28 NIKE Marks in violation of § 14247 of the California Business and Professions Code;

1 and (viii) willfully engaged in unfair competition in violation of §§ 17200, *et. seq.* of
2 the California Business and Professions Code;

3 2. A preliminary and permanent injunction against further infringement,
4 direct and indirect, of the Asserted Patent by Defendants, and each of their agents,
5 employees, servants, attorneys, successors and assigns, and all others in privity or
6 acting in concert with any of them;

7 3. A preliminary and permanent injunction against further infringement, false
8 designation of origin, unfair competition, and dilution of the NIKE Marks by
9 Defendants, and each of their agents, employees, servants, attorneys, successors and
10 assigns, and all others in privity or acting in concert with any of them, including at least
11 from selling, offering to sell, distributing, or advertising the Offending Products, or any
12 other products that use a copy, reproduction, or colorable imitation of the NIKE Marks;

13 4. An order directing the destruction of all Offending Products, or any other
14 products that use a copy, reproduction, or colorable imitation of the NIKE Marks in
15 Defendants' possession or control, including the destruction of all advertising materials
16 related to the Offending Products and any additional Offending Products in Defendants'
17 possession or control, including on the Internet;

18 5. An award of damages adequate to compensate Plaintiffs for the patent
19 infringements that have occurred pursuant to 35 U.S.C. § 284, which shall be trebled as
20 a result of Defendants' willful patent infringement, or an award of Defendants' profits
21 from their infringements pursuant to 35 U.S.C. § 289, whichever is greater, together
22 with prejudgment interest and costs;

23 6. An assessment of costs, including reasonable attorney fees and expenses,
24 pursuant to 35 U.S.C. § 285, with prejudgment interest;

25 7. An award of Defendants' profits, actual damages, enhanced profits and
26 damages, costs, and reasonable attorney fees under 15 U.S.C. §§ 1114, 1116, and 1117
27 for Defendants' trademark infringements and dilution; and

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